

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF TENNESSEE

In re:

No. 94-10916

Chapter 13

JAMES E. PURYEAR, SR.,

Debtor

MEMORANDUM

This case is before the court upon the trustee's motion to dismiss the case, a motion by JSK, Inc., d/b/a Thrifty Car Rental, for relief from stay, and the debtor's objection to claim number 20 of Sears, Roebuck & Co. This Memorandum is the court's findings of fact and conclusions of law. Fed. R. Bankr. P. 7052.

The debtor has proposed a plan to pay all creditors in full over the maximum allowable period of sixty (60) months. To fund the plan, the debtor has proposed to pay \$125.00 per month. The plan was confirmed by order filed April 13, 1994.

JSK, Inc., d/b/a Thrifty Car Rental, a creditor listed by the debtor as having a disputed claim in the amount of \$1.00, has now filed a claim in the amount of \$15,802.30. The debtor has other unsecured claims in excess of \$5,000.00. Quite obviously, debtor's proposal to pay \$125.00 per month will not pay his creditors in full over sixty (60) months.

Debtor has not requested additional time to file a modified plan, indicating through counsel that the proposed monthly payment was his best effort. A plan paying debtor's creditors less

than in full could not be confirmed because the value of debtor's assets, principally his home, exceeds his liabilities. 11 U.S.C. §1325(a)(4).

The claim of JSK, Inc., is the obvious impediment to debtor's confirmed plan. Debtor has objected to the claim, and JSK, Inc., has requested relief from the stay. The claim of JSK, Inc., is based upon breach of contract and involves valuation of a motor vehicle. Ordinarily, the court would determine the claim; however, the debtor filed a counterclaim in state court and insists on pursuing the counterclaim. The counterclaim involves a products liability claim and a claim for intentional infliction of emotional distress. Under these circumstances, the court chooses to abstain. 28 U.S.C. §1334(c)(1); 28 U.S.C. §157(a); Fed. R. Bankr. P. 5011.

A delay to allow the debtor to assert his counterclaim in state court is an unreasonable delay by the debtor that is prejudicial to his creditors. 11 U.S.C. §1307(c)(1). Furthermore, the plan as presently constituted simply does not meet the requirements of 11 U.S.C. §1325. The trustee's motion shall be sustained, the case shall be dismissed, and all other pending matters are rendered moot.

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R. THOMAS STINNETT  
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT  
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ORDER

This case came to be heard upon the trustee's motion to dismiss. For the reasons set forth in a separate Memorandum,

It is ORDERED that this case is dismissed. 11 U.S.C. §13307;

It is further ORDERED that the trustee disburse the balance of funds on hand in accordance with the confirmed plan;

It is further ORDERED that debtor's objection to claim number 20, the motion for relief from stay filed by JSK, Inc., and debtor's objection to claim number 23 are rendered moot; and

It is further ORDERED that the trustee file his final report in this case.

ENTER:

BY THE COURT

entered 11/2/1994

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R. THOMAS STINNETT  
UNITED STATES BANKRUPTCY JUDGE